United Nations A/63/292

General Assembly

Distr.: General
14 August 2008

Original: English

Sixty-third session
Item 67 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

The right to education

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to education, Vernor Muñoz, submitted in accordance with Human Rights Council resolution 8/4.

* A/63/150 and Corr.1

08-46192 (E) 090908

Report of the Special Rapporteur on the right to education

Summary

The present report is submitted pursuant to resolution 8/4 in which the Human Rights Council renewed the mandate of the Special Rapporteur on the right to education and requested him to submit a report to the General Assembly.

For his first report to the General Assembly and because of strict time constraints concerning the submission of reports to the General Assembly, the Special Rapporteur will present a brief history of the mandate and the topics covered by him and his predecessor over the past years, as well as a more detailed presentation on the topic of his thematic report submitted to the Human Rights Council in 2008 on education in emergency situations.

The Special Rapporteur on the right to education has identified emergencies as a source of serious violations of the right to education, one that currently affects a large number of people. By emergency, the Special Rapporteur means a situation arising out of armed conflict or natural disaster.

In his last report to the Human Rights Council, the Special Rapporteur assessed the consequences of emergencies and the effect of recent trends on the place of education in emergencies. He surveyed the legal and political framework that in part determines the international community's response to emergencies and attempts to clarify the responsibilities of those involved, and tried to identify the main education providers. Finally, the Special Rapporteur made a number of general recommendations and recommendations to States, donors, intergovernmental organizations and civil society organizations.

I. Introduction

1. The mandate of the Special Rapporteur on the right to education was established by the Commission on Human Rights in its resolution 1998/33, entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights", which included the right to education.

2. In 1998 Katarina Tomasevksi (Croatia) was appointed as Special Rapporteur. Her initial three-year mandate was renewed for a further three-year period in 2001 by the adoption of the first resolution of the Commission on Human Rights specifically devoted to the right to education (resolution 2001/29).

3. The current mandate holder, Vernor Muñoz Villalobos (Costa Rica) was appointed in 2004. Since that date the mandate has been renewed by the Commission on Human Rights in its resolution 2004/25, extended by the Human Rights Council in its decision 1/102 and renewed for a further three years in 2008 by Human Rights Council resolution 8/4 of 18 June 2008.

4. From 1998 to 2007 the mandate holder was requested to report annually to the Commission on Human Rights (later the Human Rights Council). In its resolution 8/4, the Human Rights Council requested the mandate to report also to the General Assembly. The present report is accordingly submitted to the Assembly.

5. Strict time constraints on the submission of reports to the General Assembly allow the Special Rapporteur to offer in his initial report only this brief review of the mandate and the work undertaken to date by its holders. Greater attention will also be paid to the most recent report, "Education in emergency situations", submitted to the Human Rights Council in 2008.[1]

II. The mandate to date

Work undertaken

6. As the normative content of the right to education was undeveloped at the time of her appointment, and as Ms. Tomasevksi was the first mandate holder, her focus was necessarily broad. While recognizing the lack of a global common understanding and language on the right to education, she proposed and elucidated in the series of her annual reports[2] an analytical framework to evaluate its respect, protection and realization. Her analytical framework, used to measure the advancement of a normative framework, is commonly referred to as the "4-A scheme" (education should be available, accessible, acceptable and adaptable), a scheme since adopted by the Committee on Economic, Social and Cultural Rights.

7. Ms. Tomasevksi further sought to identify, make known and offer solutions to obstacles to the fulfilment of the right to education and in so doing addressed the

[1] A/HRC/8/10.

[2] E/CN.4/1999/49, E/CN.4/2000/6, E/CN.4/2001/52, E/CN.4/2002/60, E/CN.4/2003/9 and E/CN.4/2004/45.

impact of macroeconomic policies, poverty, gender and other forms of discrimination.

8. The necessity of mainstreaming human rights into all international strategies, and the manner in which they are closely interlinked, was raised in her reports, as was her consequent dialogue with the World Bank. The specific aim of the dialogue was to encourage the mainstreaming of human rights into the World Bank policies, the focus there being the promotion, guarantee and right to free and compulsory primary education.

9. In her final report to the Commission on Human Rights, Ms. Tomasevksi emphasized the importance, and thus the need for continuous assessment, of the work carried out on the making of economic, social and cultural rights with a focus on the right to education, subject to jurisdiction.

10. With the benefit of an increasingly accepted and utilized normative and analytical framework on the right to education, the current mandate holder, Vernor Muñoz Villalobos, has been able to address in greater detail specific issues in the four reports he has submitted to date, first to the Commission on Human Rights and later the Human Rights Council. In his initial report,[3] he continued the discussion initiated by his predecessor on strengthening the human rights imperative of education. He further encouraged a shift from education policies that see education as an economic good and service to those who recognize education as a right, and re-emphasized the right to a free and compulsory primary education.

11. In his 2006 report,[4] the Special Rapporteur linked the need for a shift of public policies towards the integration of human rights-based provision of education into programmes to ensure girls' access to education, in turn closely linking that right to Goals 2 and 3 of the Millennium Development Goals: universal primary education and gender equality. The report addressed the socio-cultural context of gender discrimination and denounced the negative impact on education, especially on that for girls, of the persistently held view of education being a service rather than a human right. It insisted on the importance of ensuring not only the access of girls to school but also their completion of the education cycle.

12. Disability was found to be a major obstacle to the fulfilment of human rights generally and to education specifically. To tie in with the adoption of the 2007 Convention on the Rights of Persons with Disabilities, the Special Rapporteur therefore undertook research and engaged in dialogue with States and other relevant stakeholders on the issue of disability and education. His 2007 report[5] emphasized the right of persons with disabilities to inclusive education, a right frequently denied, thus contributing to persistent and lifelong exclusion from society.

13. The report also highlighted the fact that inherent within inclusive education is the recognition that it is possible for all children and young people, regardless of their situation or differences, to learn together. As with all preceding reports, it ended with a series of recommendations for legislative, policy and financial measures, the adoption of which would move forward the fulfilment of the right to education.

---

[3] E/CN.4/2005/50.

[4] E/CN.4/2006/45.

[5] A/HRC/4/29.

14. The Special Rapporteur's most recent report on emergency situations will be discussed in greater detail below.

15. The mandate holders have sought to engage with and maintain active participation and dialogue with all relevant stakeholders, including Governments. For example, the preparation of the thematic reports included the distribution of a questionnaire to all Governments, intergovernmental organizations and non-governmental organizations seeking information on relevant regional, State and local policy and legislation and its implementation.

16. The discharge of the mandate of the Special Rapporteur is further facilitated by formal dialogue during fact-finding country visits. Seeking an equitable geographical spread, these visits enable the collection of information, oral and written, from diverse but country-specific sources and interaction with those sources, and specifically allows for frank and pertinent discussions with Governments. The likelihood of implementation of recommendations addressed to the most relevant actors (including, for instance, Governments, intergovernmental agencies, donors, non-governmental organizations) in each subsequent report is therefore increased.

17. Visits to the following countries were made by the initial mandate holder (in chronological order): Uganda;[6] United Kingdom of Great Britain and Northern Ireland — England;[7] United States of America;[8] Turkey;[9] Indonesia;[10] United Kingdom of Great Britain and Northern Ireland — Northern Ireland;[11] China;[12] and Colombia;[13] and the current holder to: Botswana;[14] Germany;[15] Morocco;[16] Malaysia;[17] and Bosnia-Herzegovina.[18] Guatemala was visited in July 2008.

18. The Special Rapporteur also engages in dialogue with specific States concerning communications of alleged violations of the right to education. He receives information on alleged violations from a range of sources, including national, regional and international non-governmental organizations, as well as intergovernmental organizations. If, following enquiries, the information is considered reliable and credible, he may address the Government concerned, either together with other relevant special procedures or independently. He will invite comments on the allegation, seeking clarification, recalling relevant obligations under international law and requesting information on steps being taken by those concerned to redress the situation in question. In transmitting allegations and urgent appeals, he does not judge the merits of any case, nor does he support the opinion of the persons on behalf of whom he intervenes.

---

[6] E/CN.4/2000/6/Add.1.
[7] E/CN.4/2000/6/Add.2.
[8] E/CN.4/2002/60/Add.1.
[9] E/CN.4/2002/60/Add.2.
[10] E/CN.4/2003/9/Add.1.
[11] E/CN/4/2003/9/Add.2.
[12] E/CN.4/2004/45/Add.1.
[13] E/CN.4/2004/45/Add.2.
[14] E/CN.4/2006/45/Add.1.
[15] A/HRC/4/29/Add.3.
[16] A/HRC/8/10/Add.2.
[17] A/HRC/8/10/Add.3 (to be issued)
[18] A/HRC/8/10/Add.4.

III. The right to education in emergency situations

19. The most recent thematic report of the Special Rapporteur, entitled "The right to education in emergency situations" was submitted to the Human Rights Council at its June 2008 session.[19] The subject chosen was emergency situations, either natural disasters or situations of conflict, which have been identified as a source of serious and increasingly frequent denial of the right to education, affecting also increasingly high numbers of people. Although it may often seem geographically or temporarily distant, no region, no section of the world's population can confidently assume it will not be touched, directly or indirectly, by these emergency situations.

20. The aim of the report was to highlight the most notable challenges to the right to education in emergency situations, to identify those with principal responsibility for its implementation, to consider innovative approaches and lessons learned, and to offer recommendations as to how implementation of the right to education might be improved in such emergencies.

21. Education in emergencies is situated within an international legal framework that is relatively straightforward. The right to education is reiterated in international human rights and humanitarian legal instruments and it is not suspended in times of emergency, irrespective of the legal status (i.e., refugee, internally displaced, child combatant) of those concerned. Specifically, attacks on buildings devoted to education are now viewed, under article 8, paragraph 2 (e) (iv), of the Rome Statute of the International Criminal Court, as war crimes. The international community is urged to take note of the importance attached to education in the Rome Statute and to make greater efforts to end the frequent impunity for persons and armed groups directly targeting violence at schools, students and teachers.

22. More generally, as parties to international treaties, States (with international cooperation where necessary) have the primary legal duty to implement that right even if lacking the necessary capacity. In practice, assistance is frequently provided by numerous agencies dedicated to educational assistance. While such assistance is vital, it has often been associated with differing agency priorities or capacities and poor coordination.

23. The international political framework is less straightforward. Particularly welcome, however, is the implication in the 2000 Dakar Framework for Action on Education, of recognition of a collective responsibility of the international community to meet the needs of education systems, by 2015, affected by conflict, natural calamities and instability. This is supplemented by State commitments arising under the 2000 Millennium Development Goals, which focus on the goal of access to free and compulsory primary education, again by 2015. The language of education as a "right" embedded within the international legal framework is, however, largely absent in those political commitments.

24. Despite that absence, assistance by the international community — through intergovernmental and bilateral agencies, bilateral donors, and non-governmental organizations — has supported some States lacking the requisite capacity to move towards ensuring provision of education in situations of emergency. The recognition of an increased need for a harmonized framework to coordinate the activities of the various actors involved and also to promote their accountability has led to the

[19] A/HRC/8/10.

development of Minimum Standards for Education in Emergencies, Chronic Crisis and Early Reconstruction, spearheaded by the Inter-Agency Network on Education in Emergencies. Despite evidence of effective application of the Standards in certain situations of conflict and natural disasters, they remain underutilized. The Special Rapporteur therefore urges their increased dissemination and use as a basis for the educational activities that form part of each humanitarian response.

25. Effective implementation of education provisions in emergency situations also requires an understanding of its context. To some extent, however, a full understanding of its significance remains elusive. The reasons for it vary but include the fact that statistics on the numbers of and differentially affected populations remain imprecise and inadequate. Further, intervention priorities traditionally have been based on the perception (now increasingly challenged) that education is a development rather than humanitarian activity. That has led to only a relatively recent focus of the international community on education in emergency situations, reflected also in research, literature and learning on the issue. In addition to and of specific relevance to situations of conflict, is the lack of conceptual clarity on the relationship between education, conflicts and peacebuilding.

26. The challenges to an adequate understanding of context, however, cannot detract from the persistent identification by communities living in emergency situations of the priority they attach to the necessity of the provision and/or continuation of education. Their identification of education as a priority, standing alongside those of food, health and shelter, should be noted and acted upon by the international community.

27. Although statistics are incomplete, they suggest that the number of children affected by emergency situations is considerable. In 2003 the United Nations Children Fund estimated that 121 million children were affected by armed conflict alone.[20] A review one year later by the Women's Commission for Refugee Women and Children estimated the number of children and adolescents affected by armed conflict and without access to formal education to be at least 27 million, most being internally displaced persons.[21]

28. The statistics that exist on natural disasters indicate that while they may cause significantly fewer direct deaths than armed conflicts, they may also affect directly and indirectly up to seven times more people and, most troubling, are increasing in their frequency.[22]

29. In all emergency situations, the number of persons with disabilities tends to rise. They are consequently exposed to not only the trauma of the emergency itself, but also to discrimination and even greater hardship than might otherwise be the case, including greatly reduced access to educational opportunities.

30. Statistics which tend to emphasize school enrolments and dropout rates are inadequate to show the full effect of emergency situations on education; it frequently results in its interruption, delay or denial. Statistics fail to show, for

[20] UNICEF, *The State of the World's Children, 2004: Girls, Education and Development* (New York, 2004).

[21] Women's Commission for Refugee Women and Children, *Global Survey on Education in Emergencies* (New York, 2004).

[22] Burde, D., *Education in crisis situations: mapping the field.* Basic Education Policy Support activity (United States Agency for International Development, New York, 2005).

instance, the destruction of educational infrastructure, deaths of staff, attacks against school buildings, increasingly brutal attacks against teachers, children and parents (often gender-specific), both within and outside schools, the recruitment of child soldiers from classrooms, the impact of psychological trauma, fear and stress that can impair learning ability, motivation and mental health, denial of access or inappropriate learning processes for people with disabilities and indeed increased multiple discrimination for already marginalized groups.

31. It is possible to identify populations specifically and differently affected by emergency situations: refugees and returnees, internally displaced persons, women and girls, child soldiers and combatants, persons with disabilities, and young people and adolescents.

32. The Office of the United Nations High Commissioner for Refugees largely determines the educational options of refugees. It has emphasized the principal aim of its education programme to ensure successful repatriation and reintegration of returnees. Numerous obstacles, often financial, result in mixed results.

33. Up to 90 per cent of internally displaced people are thought to be denied education. One reason is the lack of a specific international agency mandated to oversee its provision, another being a not uncommon lack of commitment by the authorities. Their needs should not be ignored.

34. The targeting and discrimination against women and girls in emergency situations combined with their pre-existing vulnerability to discrimination is often reflected in their decreased and often inappropriate educational opportunities. It is imperative that, with the active participation of women, strategies are developed to secure for girls in particular their psychological and mental integrity, and curricula appropriate to their needs and rights.

35. Addressing the recruitment of children into formal and informal armed forces has been the focus of much international attention. Despite positive examples of international and local efforts to intervene and ensure their demobilization, their subsequent integration into communities and educational programmes in particular often remain inadequate in number, relevance and quality. That situation could be redressed through increased resources and research, ensuring the participation of children affected.

36. Particular attention must, however, be paid to children with disabilities, who even in times of non-emergency face exclusion from and discrimination within education. Their specific and additional needs to ensure inclusion are frequently overlooked in times of emergency.

37. The Special Rapporteur notes that there has been a rise in experimental and alternative forms of providing education often targeted at young people and adolescents who are not addressed by the many efforts that tend to focus on primary education. Although these initiatives have met with mixed reception and success, Governments and donors may learn much from them and, where appropriate, may support them.

38. Different experiences and educational needs of affected populations, combined with varying capacities of States to respond to those needs, introduce complexities into provision of education in emergency situations. **The Special Rapporteur therefore recommends that the international community intensifies its search**

for models and examples of best practices. If based more specifically on an increased use of qualitative research methodologies, they will capture differential needs and contribute to the provision of education that is available, accessible, acceptable and adaptable for all. The Special Rapporteur recommends curriculum design which, in situations of conflict, should be based on a detailed analysis and understanding of previous education systems, and more generally ensure the participation of diverse learners, their needs and rights, and include respect for and empowerment of diversity. It is only in this way that the provision of education will serve to contribute to peaceful coexistence.

39. **The Special Rapporteur welcomes the recent creation of the Inter-Agency Standing Committee Education Cluster. As noted above, there has been a traditional distinction between humanitarian and development assistance, with education falling within the development agenda. International efforts in emergency situations consequently focused primarily on the provision of food, health and shelter with little attention being paid to education and the vital role it plays in the overall welfare of every person irrespective of their situation. The Education Cluster demonstrates that this distinction is now formally challenged, a challenge endorsed by the Special Rapporteur. To that end, he recommends that the right to education in emergency situations be recognized by States, donors, multilateral agencies and organizations as an integral part of their humanitarian response. Close attention must also be given to the future development of the Education Cluster, its collaborations and influence so as to ensure that the distinction is finally ended.**

40. **Donors, irrespective of their form, are identified as serving a vital role in this development. The Special Rapporteur recognizes that prioritizing and targeting limited resources is invariably difficult and that there are exceptions to the observations he makes on the right to education. Nonetheless, there is persistent evidence that donors dismiss education as a priority in emergency situations resulting in limited and inadequate resources, failure to honour the full funding promises when they are made; and particularly important, failure to support States that most demonstrably require assistance. With those observations in mind, the Special Rapporteur recommends that donors formally include education in all their humanitarian assistance plans and increase their education allocation to at least 4.2 per cent of total humanitarian assistance in line with identified need.**[23]

41. **Education is a human rights imperative. It is life-sustaining and life-saving, yet denied to many. The Special Rapporteur therefore recommends to the international community — including States, donors, multilateral agencies, international and national non-governmental organizations, adults and children alike — that it intensify its efforts, its learning, its cooperation and coordination so as to contribute to a future in which the right to education is realized, respected and protected in all situations, emergency or otherwise, and for all people.**

---

[23] International Save the Children Alliance, *Last in Line, Last in School: How donors are failing children in conflict-affected fragile States, 2007* (London, 2007).